

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILLS 144 & 207

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; RECONCILING MULTIPLE AMENDMENTS TO SECTION 66-8-102 NMSA 1978 (BEING LAWS 1953, CHAPTER 139, SECTION 54, AS AMENDED BY LAWS 2003, CHAPTER 51, SECTION 10 AND BY LAWS 2003, CHAPTER 90, SECTION 3 AND ALSO BY LAWS 2003, CHAPTER 164, SECTION 10); PROVIDING SANCTIONS FOR PROBATION VIOLATORS; CLARIFYING PROVISIONS REGARDING TREATMENT OF OFFENDERS; INCREASING THE SENTENCING ENHANCEMENT FOR PRIOR DWI CONVICTIONS WHEN A PERSON COMMITS HOMICIDE BY VEHICLE OR GREAT BODILY HARM BY VEHICLE WHILE DWI; PROVIDING PENALTIES; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 66-8-102 NMSA 1978 (being Laws 1953, Chapter 139, Section 54, as amended by Laws 2003, Chapter 51,

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1 Section 10 and by Laws 2003, Chapter 90, Section 3 and also by
2 Laws 2003, Chapter 164, Section 10) is amended to read:

3 "66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING
4 LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE
5 OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

6 A. It is unlawful for a person who is under the
7 influence of intoxicating liquor to drive a vehicle within this
8 state.

9 B. It is unlawful for a person who is under the
10 influence of any drug to a degree that renders him incapable of
11 safely driving a vehicle to drive a vehicle within this state.

12 C. It is unlawful for:

13 (1) a person who has an alcohol concentration
14 of eight one hundredths or more in his blood or breath to drive
15 a vehicle within this state; or

16 (2) a person who has an alcohol concentration
17 of four one hundredths or more in his blood or breath to drive
18 a commercial motor vehicle within this state.

19 D. Aggravated driving while under the influence of
20 intoxicating liquor or drugs consists of a person who:

21 (1) has an alcohol concentration of sixteen
22 one hundredths or more in his blood or breath while driving a
23 vehicle within this state;

24 (2) has caused bodily injury to a human being
25 as a result of the unlawful operation of a motor vehicle while

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1 driving under the influence of intoxicating liquor or drugs; or

2 (3) refused to submit to chemical testing, as
3 provided for in the Implied Consent Act, and in the judgment of
4 the court, based upon evidence of intoxication presented to the
5 court, was under the influence of intoxicating liquor or drugs.

6 E. A person under first conviction pursuant to this
7 section shall be punished, notwithstanding the provisions of
8 Section 31-18-13 NMSA 1978, by imprisonment for not more than
9 ninety days or by a fine of not more than five hundred dollars
10 (\$500), or both; provided that if the sentence is suspended in
11 whole or in part or deferred, the period of probation may
12 extend beyond ninety days but shall not exceed one year. Upon
13 a first conviction pursuant to this section, an offender may be
14 sentenced to not less than forty-eight hours of community
15 service or a fine of three hundred dollars (\$300). The
16 offender shall be ordered by the court to participate in and
17 complete a screening program described in Subsection [H] K of
18 this section and to attend a driver rehabilitation program for
19 alcohol or drugs, also known as a "DWI school", approved by the
20 bureau and also may be required to participate in other
21 rehabilitative services as the court shall determine to be
22 necessary. In addition to those penalties, when an offender
23 commits aggravated driving while under the influence of
24 intoxicating liquor or drugs, the offender shall be sentenced
25 to not less than forty-eight consecutive hours in jail. If an

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1 offender fails to complete, within a time specified by the
2 court, any community service, screening program, treatment
3 program or DWI school ordered by the court or fails to comply
4 with any other condition of probation, the offender shall be
5 sentenced to not less than an additional forty-eight
6 consecutive hours in jail. Notwithstanding any provision of
7 law to the contrary, if an offender's sentence was suspended or
8 deferred in whole or in part, and the offender violates any
9 condition of probation, the court may impose any sentence that
10 the court could have originally imposed and credit shall not be
11 given for time served by the offender on probation. Any jail
12 sentence imposed pursuant to this subsection for failure to
13 complete, within a time specified by the court, any community
14 service, screening program, treatment program or DWI school
15 ordered by the court or for aggravated driving while under the
16 influence of intoxicating liquor or drugs shall not be
17 suspended, deferred or taken under advisement. On a first
18 conviction pursuant to this section, any time spent in jail for
19 the offense prior to the conviction for that offense shall be
20 credited to any term of imprisonment fixed by the court. A
21 deferred sentence pursuant to this subsection shall be
22 considered a first conviction for the purpose of determining
23 subsequent convictions.

24 F. A second or third conviction pursuant to this
25 section shall be punished, notwithstanding the provisions of

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1 Section 31-18-13 NMSA 1978, by imprisonment for not more than
2 three hundred sixty-four days or by a fine of not more than one
3 thousand dollars (\$1,000), or both; provided that if the
4 sentence is suspended in whole or in part, the period of
5 probation may extend beyond one year but shall not exceed five
6 years. Notwithstanding any provision of law to the contrary
7 for suspension or deferment of execution of a sentence:

8 (1) upon a second conviction, an offender
9 shall be sentenced to a jail term of not less than [~~seventy-~~
10 ~~two~~] ninety-six consecutive hours, forty-eight hours of
11 community service and a fine of five hundred dollars (\$500).
12 In addition to those penalties, when an offender commits
13 aggravated driving while under the influence of intoxicating
14 liquor or drugs, the offender shall be sentenced to a jail term
15 of not less than ninety-six consecutive hours. If an offender
16 fails to complete, within a time specified by the court, any
17 community service, screening program or treatment program
18 ordered by the court, the offender shall be sentenced to not
19 less than an additional seven consecutive days in jail. A
20 penalty imposed pursuant to this paragraph shall not be
21 suspended or deferred or taken under advisement; and

22 (2) upon a third conviction, an offender shall
23 be sentenced to a jail term of not less than thirty consecutive
24 days and a fine of seven hundred fifty dollars (\$750). In
25 addition to those penalties, when an offender commits

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1 aggravated driving while under the influence of intoxicating
2 liquor or drugs, the offender shall be sentenced to a jail term
3 of not less than sixty consecutive days. If an offender fails
4 to complete, within a time specified by the court, any
5 screening program or treatment program ordered by the court,
6 the offender shall be sentenced to not less than an additional
7 sixty consecutive days in jail. A penalty imposed pursuant to
8 this paragraph shall not be suspended or deferred or taken
9 under advisement.

10 G. Upon a fourth [~~or subsequent~~] conviction
11 pursuant to this section, an offender is guilty of a fourth
12 degree felony [~~as provided in Section 31-18-15 NMSA 1978, and~~
13 ~~shall be sentenced to a jail term of not less than six months,~~
14 ~~which shall not be suspended or deferred or taken under~~
15 ~~advisement]~~ and, notwithstanding the provisions of Section
16 31-18-15 NMSA 1978, shall be sentenced to a term of
17 imprisonment of eighteen months, six months of which shall not
18 be suspended, deferred or taken under advisement.

19 H. Upon a fifth conviction pursuant to this
20 section, an offender is guilty of a fourth degree felony and,
21 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
22 shall be sentenced to a term of imprisonment of two years, one
23 year of which shall not be suspended, deferred or taken under
24 advisement.

25 I. Upon a sixth conviction pursuant to this

1 section, an offender is guilty of a third degree felony and,
2 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
3 shall be sentenced to a term of imprisonment of thirty months,
4 eighteen months of which shall not be suspended, deferred or
5 taken under advisement.

6 J. Upon a seventh or subsequent conviction pursuant
7 to this section, an offender is guilty of a third degree felony
8 and, notwithstanding the provisions of Section 31-18-15 NMSA
9 1978, shall be sentenced to a term of imprisonment of three
10 years, two years of which shall not be suspended, deferred or
11 taken under advisement.

12 [~~H-~~] K. Upon any conviction pursuant to this
13 section, an offender shall be required to participate in and
14 complete, within a time specified by the court, an alcohol or
15 drug abuse screening program approved by the department of
16 finance and administration and, if necessary, a treatment
17 program approved by the court. The requirement imposed
18 pursuant to this subsection shall not be suspended, deferred or
19 taken under advisement.

20 L. Upon a second or third conviction pursuant to
21 this section, an offender shall be required to participate in
22 and complete, within a time specified by the court:

23 (1) not less than a twenty-eight-day
24 inpatient, residential or in-custody substance abuse treatment
25 program approved by the court;

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1 (2) not less than a ninety-day outpatient
2 treatment program approved by the court;

3 (3) a drug court program approved by the
4 court; or

5 (4) any other substance abuse treatment
6 program approved by the court.

7 The requirement imposed pursuant to this subsection shall
8 not be suspended, deferred or taken under advisement.

9 M. Upon a felony conviction pursuant to this
10 section, the corrections department shall provide substance
11 abuse counseling and treatment to the offender in its custody.
12 While the offender is on probation or parole under its
13 supervision, the corrections department shall also provide
14 substance abuse counseling and treatment to the offender or
15 shall require the offender to obtain substance abuse counseling
16 and treatment.

17 ~~[F.]~~ N. Upon a first conviction for aggravated
18 driving while under the influence of intoxicating liquor or
19 drugs pursuant to the provisions of Subsection D of this
20 section, as a condition of probation, an offender shall be
21 required to have an ignition interlock device installed and
22 operating for a period of one year on all motor vehicles driven
23 by the offender, pursuant to rules adopted by the bureau.
24 Unless determined by the sentencing court to be indigent, the
25 offender shall pay all costs associated with having an ignition

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1 interlock device installed on the appropriate motor vehicles.
2 If an offender drives a motor vehicle that does not have an
3 ignition interlock device installed on the motor vehicle, the
4 offender may be in violation of the terms and conditions of his
5 probation.

6 ~~[J-]~~ O. Upon a first conviction for driving while
7 under the influence of intoxicating liquor or drugs pursuant to
8 the provisions of Subsection A, B or C of this section, as a
9 condition of probation, an offender may be required to have an
10 ignition interlock device installed and operating for a period
11 of one year on all motor vehicles driven by the offender,
12 pursuant to rules adopted by the bureau. Unless determined by
13 the sentencing court to be indigent, the offender shall pay all
14 costs associated with having an ignition interlock device
15 installed on the appropriate motor vehicles. If an offender
16 drives a motor vehicle that does not have an ignition interlock
17 device installed on the motor vehicle, the offender may be in
18 violation of the terms and conditions of his probation.

19 ~~[K-]~~ P. Upon any subsequent conviction pursuant to
20 this section, as a condition of probation, a subsequent
21 offender shall be required to have an ignition interlock device
22 installed and operating for a period of at least one year on
23 all motor vehicles driven by the subsequent offender, pursuant
24 to rules adopted by the bureau. Unless determined by the
25 sentencing court to be indigent, the subsequent offender shall

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1 pay all costs associated with having an ignition interlock
2 device installed on the appropriate motor vehicles. If a
3 subsequent offender drives a motor vehicle that does not have
4 an ignition interlock device installed on the motor vehicle,
5 the subsequent offender may be in violation of the terms and
6 conditions of his probation.

7 ~~[E.]~~ Q. In the case of a first, second or third
8 offense under this section, the magistrate court has concurrent
9 jurisdiction with district courts to try the offender.

10 ~~[M.]~~ R. A conviction pursuant to a municipal or
11 county ordinance in New Mexico or a law of any other
12 jurisdiction, territory or possession of the United States or
13 of a tribe, ~~[where]~~ when that ordinance or law is equivalent to
14 New Mexico law for driving while under the influence of
15 intoxicating liquor or drugs, and prescribes penalties for
16 driving while under the influence of intoxicating liquor or
17 drugs, shall be deemed to be a conviction pursuant to this
18 section for purposes of determining whether a conviction is a
19 second or subsequent conviction.

20 ~~[N.]~~ S. In addition to any other fine or fee that
21 may be imposed pursuant to the conviction or other disposition
22 of the offense under this section, the court may order the
23 offender to pay the costs of any court-ordered screening and
24 treatment programs.

25 ~~[O.]~~ T. As used in this section:

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1 (1) "bodily injury" means an injury to a
2 person that is not likely to cause death or great bodily harm
3 to the person, but does cause painful temporary disfigurement
4 or temporary loss or impairment of the functions of any member
5 or organ of the person's body; [~~and~~]

6 (2) "commercial motor vehicle" means a motor
7 vehicle or combination of motor vehicles used in commerce to
8 transport passengers or property if the motor vehicle:

9 (a) has a gross combination weight
10 rating of more than twenty-six thousand pounds inclusive of a
11 towed unit with a gross vehicle weight rating of more than ten
12 thousand pounds;

13 (b) has a gross vehicle weight rating of
14 more than twenty-six thousand pounds;

15 (c) is designed to transport sixteen or
16 more passengers, including the driver; or

17 (d) is of any size and is used in the
18 transportation of hazardous materials, which requires the motor
19 vehicle to be placarded under applicable law; and

20 [~~(2)~~] (3) "conviction" means an adjudication
21 of guilt and does not include imposition of a sentence."

22 Section 2. Section 66-8-101 NMSA 1978 (being Laws 1978,
23 Chapter 35, Section 509, as amended) is amended to read:

24 "66-8-101. HOMICIDE BY VEHICLE--GREAT BODILY [~~INJURY~~]
25 HARM BY VEHICLE.--

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1 A. Homicide by vehicle is the killing of a human
2 being in the unlawful operation of a motor vehicle.

3 B. Great bodily [~~injury~~] harm by vehicle is the
4 injuring of a human being, to the extent defined in Section
5 30-1-12 NMSA 1978, in the unlawful operation of a motor
6 vehicle.

7 C. [~~Any~~] A person who commits homicide by vehicle
8 or great bodily [~~injury~~] harm by vehicle while under the
9 influence of intoxicating liquor or while under the influence
10 of any drug or while violating Section 66-8-113 NMSA 1978 is
11 guilty of a third degree felony and shall be sentenced pursuant
12 to the provisions of Section 31-18-15 NMSA 1978, provided that
13 violation of speeding laws as set forth in the Motor Vehicle
14 Code shall not per se be a basis for violation of Section
15 66-8-113 NMSA 1978.

16 D. [~~Any~~] A person who commits homicide by vehicle
17 or great bodily [~~injury~~] harm by vehicle while under the
18 influence of intoxicating liquor or while under the influence
19 of any drug, as provided in Subsection C of this section, and
20 who has incurred a prior DWI conviction within ten years of the
21 occurrence for which he is being sentenced under this section
22 shall have his basic sentence increased by [~~two~~] four years for
23 each prior DWI conviction.

24 E. For the purposes of this section, "prior DWI
25 conviction" means:

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1 (1) a prior conviction under Section 66-8-102
2 NMSA 1978; or

3 (2) a prior conviction in New Mexico or any
4 other jurisdiction, territory or possession of the United
5 States, including a tribal jurisdiction, when the criminal act
6 is driving under the influence of alcohol or drugs.

7 F. ~~[Any]~~ A person who willfully operates a motor
8 vehicle in violation of Subsection C of Section 30-22-1 NMSA
9 1978 and directly or indirectly causes the death of or great
10 bodily ~~[injury]~~ harm to a human being is guilty of a third
11 degree felony and shall be sentenced pursuant to the provisions
12 of Section 31-18-15 NMSA 1978."

13 Section 3. EMERGENCY.--It is necessary for the public
14 peace, health and safety that this act take effect immediately.

underscored material = new
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